IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6325 OF 1998

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

---

1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

M/S.PATEL MECHEM PVT. LTD. & ANR.
VERSUS
THE GUJARAT ELECTRICITY BOARD

Appearance:
MR PARESH DAVE FOR PETITIONERS
MS TANYA FOR MS SIDDHI TALATI FOR RESPONDENT

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 10/07/2000

C.A.V. JUDGMENT

#. The learned counsel for the petitioner, relying on the decision of the apex court in the case of M/s.Isha Marbles v. Bihar State Electricity Board reported in 1995(2) GLH 134 and of this court in special civil application No.3014 of 1998 decided on 24th July 1998 (Coram: M.S.Shah, J.), contended that the respondent has no right whatsoever to recover the amount of Rs.56,279.29 from the petitioner, the liability of the erstwhile defaulter unit. In his submission, the petitioner has purchased the unit of the defaulter in the open auction from the Gujarat State Financial Corporation and whatever the liabilities of the dues of electricity of the erstwhile unit are not recoverable from the petitioner.

#. On the other hand, the learned counsel for respondent submitted that the petitioner has not come up with clean hands before this court. It is a case where this amount has been paid by the erstwhile defaulter unit itself and now the petitioner is filing this petition. From these facts, it appears that there is a close relationship or complicity between the petitioner and past owner of the unit. In support of her contention, she read out few paragraphs of the affidavit filed by officer of the Board. The averments made by officer of the Board in the affidavit have not been controverted by petitioner. The petitioners have not filed any rejoinder to the affidavit of the Board. It has next been contended that it is not the case where the Board has recovered from the petitioner this amount by coercive method or by asserting any undue pressure.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. In the facts of the case, I am satisfied that the decision of the apex court and of this court on which reliance has been placed by learned counsel for the petitioner are of little help to petitioner. It is not disputed by learned counsel for the petitioner that the petitioner has not filed rejoinder to reply affidavit filed by petitioner. The electric connection was in the name of consumer M/s. Maruti Chemicals bearing customer No.26001/01972/0 and 26001/01972/1 for single phase and three phase. These dues which are subject matter of this petition were of M/s. Maruti Chemicals. As M/s.Maruti Chemicals made default in payment of loan installments to GSFC, the unit was sealed and it is not in dispute that it has been purchased by petitioner. It is also taken that there was no agreement between the State Financial Corporation and the petitioner to pay the liability of

electricity dues of the defaulting unit by the petitioner. The defaulter unit has made payment of electricity dues upto June 1996 regularly. It was in arrears from June 1996 to October 1996 and the amount which was not paid was Rs.46,500/= for three phase line meter and Rs.4,825/= for single phase line meter. The earlier consumer has paid an amount of Rs.50,000/= by cheque which was returned unpaid from the bank. So in November, 1996, the arrears for electricity dues of the defaulter unit was Rs.51,518.85 for three phase line meter and Rs.4,860.34 for single phase line meter, in all Rs.56,279.19. This amount of Rs.56,279.19 was paid by cheque in the name of M/s.Maruti Chemicals and receipt was also given by the Board in the name of M/s.Maruti chemicals. This payment has been made in the month of November, 1996. The petitioner is not on scene on that date. It was not in existence at the relevant time. He applied with the proposal as per advertisement dated 6.11.96 in local newspaper and his proposal was considered and intimated vide letter dated 26.11.96. On 30.11.96 an agreement without taking possession took place between petitioner and GSFC. The petitioner after finalizing the agreement, waited for three months and applied for change of name of electricity consumer on 27.2.97. At the time of its application aforesaid, he submitted a document, i.e. receipt of payment of dues of the defaulter unit and ultimately name was transferred from M/s. Maruti Chemicals to that of M/s.Patel Mecham Pvt. Ltd. on 29th March 1997. These facts stated in the reply to the special civil application are uncontroverted. From these facts it is clearly borne out that the amount has been paid by M/s.Maruti Chemicals by cheque and the receipt has also been issued in favour of that party. The petitioner was not in existence at that time though advertisement for sale of this unit was there and proposals were sent by him on 26.11.96. From this fact and the action of the petitioner to claim difference amount, it appears to be a clear case of relationship or complicity between the petitioner and old owner of the defaulting unit. It is not the case otherwise also where the petitioner paid this amount. This writ petition is wholly misconceived and in fact an abuse of the process of the court.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. As it is a case where the petitioner has made an attempt to abuse the process of the court, exemplary costs are to be imposed and accordingly, the petitioner is directed to pay Rs.10,000/= as costs of this writ petition to the respondent-Board.

.....

(sunil)